

applicants **must** obtain specific cost information, including prices for products and services to be provided.

- Applicants are required to choose the most cost-effective alternative, with price being the single most heavily weighted factor.
 - Applicants may not receive funding for services rendered by a "technology partner," "program architect," "strategic partner," or other systems integrator, unless the goods and services to be provided are specified.
 - By not being specific about the services sought and not seeking prices for those services, selecting a service provider through this type of FCC Form 470, RFP or other method violates the requirement to choose the most cost-effective provider.
- Service Providers **cannot** assist the applicant in developing its technology plan after the FCC Form(s) 470 has been posted.
 - Prior to posting the Form 470 for any services other than basic telephone service, applicants are required to have a technology plan that defines the educational objectives to be served by technology, the technology needs, and the resources that will be required for those technology needs. The plan must include a sufficient level of information to justify and validate the products and services sought by means of the Form 470 and, if available, RFP. If the technology plan is not sufficiently developed before posting of the Form 470, the competitive process is undermined.
- Winning proposals **cannot** specify a range of ineligible services, including ineligible services such as training, consulting, and program assistance, to be provided and paid for with Schools and Libraries Universal Service Support Mechanism funding. Providing "free" ineligible services is prohibited by program rules.
- The RFPs and the winning proposals **cannot** be designed merely with the goal of "maximizing" funding. The intent of the Schools and Libraries Universal Service Support Mechanism is to help schools and libraries afford communication services required to meet educational objectives. An emphasis on maximizing SLD funding is incompatible with the FCC's objective of only providing funding for the most cost-effective alternative to meet legitimate educational objectives.
- RFPs or other solicitation methods **must** be tailored to the needs of each applicant. SLD has found nearly identical language in RFPs from a variety of applicants that resulted in awards to the same service provider.

Applicants and service providers undermine the competitive process if they structure RFPs and competitive bidding processes that favor one service provider.

Funding Year 2002 requests for support based on some or all of the practices listed above either have been or will be denied.

- SLD is posting this notice now in order to alert applicants for Funding Year 2003 about this application pattern and to urge applicants to avoid application processes that are not consistent with FCC rules.
- Applicants for Funding Year 2003 who signed multi-year contracts in prior years based on the pattern discussed here should expect their Funding Year 2002 applications to be denied and may want to initiate a new process to select service providers for Funding Year 2003.
- Applicants who may have started a process for Funding Year 2003 similar to that described in this notice are advised to consider starting a new selection process for their Funding Year 2003 service providers.

Note that the filing window for Funding Year 2003 has been extended from a closing date of January 16, 2003, to a closing date of February 6, 2003.

Questions regarding this notice should be directed to the Client Service Bureau.

FY2003 Filing Window Extended Three Weeks to February 6, 2003 (12/2/2002)	Top of Page
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In response to concerns from the applicant and service provider communities - and in consultation with the FCC and the USAC Schools and Libraries Committee - the Schools and Libraries Division is extending the deadline for the Funding Year 2003 Form 471 application filing window to Thursday, February 6, 2003 at 11:59 PM EST.

Those who began online Form 471 applications during the first two weeks of the window may have experienced difficulties because of technical issues involved with the migration to a new technology for the form. Although applicants could continue incomplete forms after the original online interface was restored on November 14, the SLD has determined that all applicants should have at least 74 days to complete their application process using the original interface.

The SLD will make every effort to review applications as

quickly as possible in order to minimize delays in the issuance of funding commitments. The SLD will begin reviewing applications as soon as they are received, so applicants are strongly encouraged to file Forms 471 at their earliest convenience.

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1 SUPERIOR COURT OF NEW JERSEY
2 LAW DIVISION - ATLANTIC COUNTY
3 DOCKET NO. ATL-L-477-04

4 RELCOMM, INC.,
5 Plaintiff,
6 vs.
7 ATLANTIC CITY BOARD OF EDUCATION;
8 FREDERICK P. NICKELS; MICRO
9 TECHNOLOGY GROUPE, INC.; DONNA
10 HAYE; MARTIN FRIEDMAN; ALEMAR
11 CONSULTING; and JOHN DOES 1-20,
12 Defendants.

13 -----
14 Friday, October 1, 2004
15 -----

COPY

16 Oral sworn deposition of MARTIN
17 FRIEDMAN, taken at the law offices of Flaster
18 Greenberg, 1810 Chapel Avenue West, Cherry Hill, New
19 Jersey, before Robert J. Boccolini, Certified
20 Shorthand Reporter and Notary Public of the State of
21 New Jersey, on the above date, commencing at 10:10
22 a.m., there being present:

23 FLASTER GREENBERG
24 1810 Chapel Avenue West
25 Cherry Hill, NJ 08002
BY: J. PHILIP KIRCHNER, ESQ.
Attorneys for Plaintiff

26 -----
27 TATE & TATE
28 The Lexington Building, Suite 5
29 180 Tuckerton Road
30 Medford, New Jersey 08055
31 (856) 983-8484 - (800) 636-8283
32 www.tate-tate.com

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1 now.
2 MR. KIRCHNER: Well, I'll agree to move
3 along and we will put this aside for the time being.
4 But just so it's clear, I think this is
5 highly relevant at least to the defamation claim that
6 my client has asserted, since apparently someone has
7 initiated a State Police investigation that may --
8 and I don't know because you're not allowing me to
9 question the witness about it, but your client
10 responded to a question I asked him about Year 5 at
11 the ACBOE, and my client was a participant in the
12 Year 5 bidding and in fact received an award, and one
13 of our claims is for defamation.

14 So, I think this is a relevant line of
15 questioning. I understand your position. And since
16 it looks like we're probably going to be reconvening
17 to continue this deposition at a later date anyway,
18 I'll agree to put it aside for now and we can discuss
19 it further and try and resolve it.

20 MR. BLEE: Mr. Kirchner, again, I used
21 the phrase uncharted water, but what concerns me was
22 Mr. Friedman's response when we allowed you to at
23 least do some prerequisite questions to establish the
24 scope of what happened with this representative from
25 the State Police and he specifically said he was told

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1 A. This is related to Year 6.
2 Q. And the previous document I believe you said
3 was related to Year 5 and 6?

4 A. I need to see the previous document. Yes,
5 it would be both.

6 Q. Okay. And you say these were additional
7 questions asked by the SLD that you were responding
8 to?

9 A. No, I am incorrect. This is part of the Year
10 6 selective review -- wait a second.

11 Well, I can't be definite. I don't know
12 whether this is part of our original submission for
13 the review or whether it was additional questions
14 that were given.

15 At the top it says additional questions, so I
16 have to go with that.

17 Q. Okay.

18 A. So, this would be a document that we were
19 preparing for the additional questions after we
20 submitted the Year 6 review.

21 Q. And did you follow a similar process for this
22 document that you testified about to the previous
23 document where you compiled pieces of responses from
24 other people and put them into this final form?

25 A. That's what you see there (indicating).

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1 that every discussion he had would be made
2 confidential.

3 So, based on that representation, I
4 think that it would be prudent for us to do what we
5 are going to do, take a step back. Perhaps Miss
6 Weinstein can somehow get a little more data to see
7 if it is appropriate for questioning. We don't
8 know -- well, I'll leave it at that.

9 MR. KIRCHNER: Okay. Let's move on.

10 BY MR. KIRCHNER:

11 Q. Take a look at what's been marked P-40, Mr.
12 Friedman. Tell me if you recognize that document,
13 please.

14 A. Okay.

15 Q. You recognize it?

16 A. Yes.

17 Q. Could you tell us what it is, please?

18 A. This is a part of a work in process to
19 respond to additional questions for year 2203, which
20 would have been the Year 6 review.

21 So, there was an audit. We submitted the
22 audit. And then we were asked to -- I'm sorry. This
23 is part of that audit.

24 Q. And this is -- you say this is related to
25 Year 6; is that right?

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1 MS. WEINSTEIN: Objection.

2 Q. What are you pointing to?

3 A. I'm pointing to your document P-39. If
4 you're referring to whether this document is a work
5 in process as this one was, the answer is yes.

6 I take information, I take documentation, I
7 write the narrative, and I submit it to my client for
8 approval and for modification.

9 Q. Okay. So then your testimony is that this
10 is your narrative?

11 A. My testimony is that, yes, I wrote what you
12 see --

13 Q. Okay.

14 A. -- based upon that process.

15 Q. I just want to ask you one thing about this
16 document before we move on.

17 On the first page there, the paragraph that
18 begins in addition, the district saw a need to allow
19 each school to have access to a local web server
20 rather than have all the district's web resources
21 loaded onto a single restricted server.

22 What do you mean by that?

23 A. That means that the district had a change in
24 the way they wanted to deploy the servers and they
25 wished to have servers in the schools that were

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1 accessible by the school so that there would be a
2 district level web server and there would be school
3 level web servers that the schools could interact
4 with.

5 It was a change in the strategy in the way
6 they would deploy the new systems.

7 Q. And when was that strategy to be implemented?
8 Was that part of Year 6?

9 A. That would be part of year -- that would be
10 the distribution of the servers that were requested
11 in Year 6.

12 Q. And is that the part of the award that was
13 given to MTG for Year 6?

14 A. Yes.

15 Q. Do you know if that was consistent with the
16 school district's technology plan that was in place
17 at that time?

18 A. The school district's technology plan did not
19 discuss the distribution to the best of my knowledge
20 directly.

21 And it was also -- the school district's
22 technology plan was a work in process and these were
23 some of the modifications that they were working on
24 in order to re-do their tech plan.

25 Q. Okay. Now, did you -- just go back a

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1 Q. And certified that they were accurate?

2 A. Yes.

3 Q. And also the 471s; is that right?

4 A. Yes.

5 Q. You completed those forms?

6 A. Yes.

7 Q. And you signed them?

8 A. Yes.

9 Q. And you certified that they were accurate?

10 A. To the best of my ability, yes.

11 Q. What exactly does the Form 471 accomplish?

12 A. 471 identifies the successful bidders.

13 Q. Okay. Who does it identify the successful
14 bidders to?

15 A. It identifies the successful bidders to the
16 SLD and requests funding for those projects.

17 Q. Okay. Do you consider that when the 471 is
18 submitted to the SLD that that is the basis of a
19 contract with the vendor who has been awarded that
20 contract?

21 MS. WEINSTEIN: Objection.

22 THE WITNESS: No. The document is an
23 announcement of a contract.

24 Q. Okay. So, is it your testimony that
25 something more has to happen before it's an actual

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1 second. Whose idea was it to make that switch?

2 A. I have no knowledge.

3 Q. Do you know who recommended that that change
4 be made?

5 A. Not at all. We had many discussions about
6 how the servers could be deployed.

7 Q. When you say we, who do you mean we?

8 A. The group of administrators that I was
9 constantly meeting with, three or four meetings, we
10 had discussions.

11 Q. In implementing this strategy, was it planned
12 that servers would be -- that were already there
13 would be put to other uses?

14 MS. WEINSTEIN: Objection to form.

15 THE WITNESS: Could be. As long as they
16 were put to other eligible uses, the answer is
17 they're still in compliance. If they are over a
18 certain age, they could have been put to other uses.

19 Q. Now, as part of your scope of work for Year 6
20 that you testified about earlier, did that include
21 submitting the Forms 470?

22 A. Yes.

23 Q. So, you completed those forms and signed
24 them?

25 A. Yes.

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1 contract?

2 A. There should be some legal agreement or
3 contract in place.

4 Q. Okay. Was that the case in Year 6?

5 MS. WEINSTEIN: Objection.

6 THE WITNESS: Yes, it was.

7 Q. You're saying that MTG had a contract in
8 place when the 471 was submitted?

9 A. MTG had a legally binding document that with
10 the approval of the board and funding from the SLD a
11 formal contract would be in place.

12 MS. WEINSTEIN: I'm going to object to
13 your eliciting testimony from the witness that calls
14 for opinions about what's legal, you know, what's a
15 legally enforceable contract.

16 I don't think that Mr. Friedman should
17 be put in the position of -- he is not a lawyer, he
18 is not an attorney, so I caution you about that going
19 forward.

20 BY MR. KIRCHNER:

21 Q. Mr. Friedman, you stated that MTG had a
22 legally enforceable document. What do you mean by
23 that?

24 A. I mean they had a document from the school
25 district accepting their bid with those two caveats,